IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVN. APPLICATION NO.213 OF 1998

Shri Gorakh Bapu Kadam-Patil .. ..Petitioner

Versus

1.Shri Anna Baba Kadam & Ors .. ..Respondents

Mr.K.B.Sonwalkar for petitioner

Mr.G.C.Sawant, for respondent nos.1 and 2

Mr.Rajesh More, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 22nd NOVEMBER, 2006

P.C.:

1. The petitioner is the original complainant. He has invoked the revisional jurisdiction of this court being aggrieved by the judgment and order dated 29.6.1998 delivered by learned Judicial Magistrate, First Class, Malshiras, in Criminal Case No.276 of 1989.

2. Shri Sonwalkar submits that the original accused were facing trial for offences punishable under Sections 325, 324, 504 read with 34 of the Indian Penal Code.

3. He submits that the admitted facts are that the complainant and the accused are residing at village Shingori, Tal. Malshiras, District Solapur. On 23.10.1989 the accused at about 4.00 p.m. came in front of the house of complainant and caused hurt after assaulting him with stick. Prior to this incident the deceased accused no.1 had abused the son of the complainant on the ground that his cattle entered the land of the accused no.1. The complainant enquired about this incident with accused. Enraged by this conduct of the complainant, the accused returned to Vasti where the complainant resides and thereafter assaulted him.

4. Shri Sonwalkar then submits that the court below has clearly overlooked the evidence which has been produced by the prosecution. He submits that the prosecution had examined, apart from the complainant, other witnesses including the Doctor and the Investigating Officer, who were independent. All of them cannot be said to be interested witnesses. He submits that if the

deposition of these witnesses is read as whole then it is clear that the incident being admitted so also the injuries sustained, the court below was bound in law to convict the original accused. He submits that by overlooking the evidence and by terming the prosecution story as a concocted one, the trial court has committed an error apparent on the face of record and in any event its judgment is vitiated by material irregularities resulting in manifest injustice. For all these reasons, the judgment of acquittal be reversed by this court in its revisional jurisdiction.

5. On the other hand Shri Sawant appearing for the original accused nos.2 and 3 submits that the judgment and order of the J.M.F.C. is consistent with the material placed on record. He submits that the prosecution has miserably failed to prove the charges levelled against the accused. The trial court is right in observing that the prosecution which is launched against the complainant by the accused, is the motive for implicating the accused. Further, the witnesses have merely reproduced the version of the complainant. There is no corroboration in as much as even the stick which is used in the assault has not been recovered. There is no proof regarding the stick

allegedly used in the assault in the absence of any recovery being proved in accordance with law. That apart, even the Doctor who has been examined to prove the injuries has admitted that injury Nos.1 to 3 are possible if one falls on a rocky land. The fracture injury has not been proved because the medical officer admits in his cross examination that it is not detected. For a fracture to be detected there has to be some other material either in the form of x-ray plate or an injury certificate. That is admittedly not brought on record. Thus, the learned judge is right in holding that there is complete variation between the ocular and medical evidence. For all these reasons, this court should not interfere in its revisional jurisdiction.

6. With the assistance of the learned advocates appearing for both sides I have perused the impugned judgment. The learned judge has rightly observed that the complainant was himself facing a prosecution at the instance of the accused. Accused no.1 died during the course of the trial. Accused nos.2 and 3 were the only accused against whom the trial proceeded. The witnesses who have been examined to prove the prosecution case are the complainant himself, Doctor and alleged eye witness

Kerappa. The other witness Bhagwan Sadhashiv Sathe was not named as an eye witness nor was his presence referred to in the FIR, therefore, his testimony has rightly been scrutinized with caution and care. The said witness has given as exaggerated version in as much as he proceeded to state that the complainant was unconscious after the assault on him with a stick. That this is not the case of the prosecution or the complainant himself is clear from his deposition. Complainant himself states that after the incident he managed to walk to the police station and lodged a FIR and thereafter was referred for medical treatment.

6. The learned judge has disbelieved the interested version of Kerappa, who has not been able to show that the incident was witnessed by him. His house is at a distance of 1 k.m. from the Vasti and he has admitted his relations with the complainant.

7. The spot panchanama being proved does not advance the case of the prosecution any further. The complainant’s version itself being of a person having a pending prosecution against him, the learned judge was right in holding that the prosecution has failed to prove

the charges levelled against the accused nos.2 and 3. The reasons assigned in paragraphs 7 to 9 of the impugned judgment to disbelieve the medical evidence are also sound, cogent and satisfactory. The fracture injury has not been proved. Once the injury certificate is taken on record, without any proof of the weapon being seized and recovered, would render the version of the Doctor also vulnerable.

8. In the above circumstances, I do not find any warrant for interference in the revisional jurisdiction of this court. The finding of fact is consistent with the materials placed on record. In the limited jurisdiction that is conferred upon this court, it is not possible to reappreciate and reappraise the same and arrive at a different conclusion. The revision application is devoid of any merit and is therefore dismissed.

9. Rule discharged.

(S.C.Dharmadhikari, J.)